

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100312

ORDER DENYING PEREMPTORY
CHALLENGE

On October 29, 2010, Parent, on behalf of Student, filed a peremptory challenge, seeking to disqualify Administrative Law Judge (ALJ) Troy Taira from hearing this case. On October 29, 2010, the San Francisco Unified School District filed an opposition. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

On October 28, 2010, ALJ Taira held a prehearing conference in this matter, which was recorded. Because, a prehearing conference has commenced, Student's October 29, 2010 peremptory challenge is untimely and is denied. This matter shall remain assigned to ALJ Taira.

IT IS SO ORDERED

Dated: October 29, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings